

House Bill 814

By: Representatives Austin of the 10th, Harden of the 28th, and Hatfield of the 177th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, so as to clarify certain provisions relating to sentencing a person convicted of possession of one ounce or less of marijuana; to provide for a charge of misdemeanor possession of marijuana; to provide that a fourth offense of misdemeanor possession of marijuana in ten years is a felony; to amend the Official Code of Georgia Annotated to change references to reflect such changes; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1.

Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, is amended by revising subsection (b) of Code Section 16-13-2, relating to conditional discharge for possession of a controlled substance as a first offense and certain nonviolent property crimes, dismissal of charges, and restitution to victims, as follows:

~~"(b) Reserved. Notwithstanding any law to the contrary, any person who is charged with possession of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor and punished by imprisonment for a period not to exceed 12 months or a fine not to exceed \$1,000.00, or both, or public works not to exceed 12 months."~~

SECTION 2.

Said chapter is further amended by revising subsection (j) of Code Section 16-13-30, relating to the purchase, possession, manufacture, distribution, or sale of a controlled substance or marijuana and penalties, as follows:

"(j)(1) It is unlawful for any person to possess, purchase, or have under his or her control; more than one ounce of marijuana. It is unlawful for any person to manufacture, deliver, distribute, dispense, administer, ~~purchase~~, sell, or possess with intent to distribute marijuana.

~~(2)~~ Except as otherwise provided in subsection (c) of Code Section 16-13-31 ~~or in Code Section 16-13-2~~, any person who violates this ~~subsection~~ paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(2)(A) It is unlawful for any person to possess, purchase, or have under his or her control one ounce or less of marijuana. Any person who violates this paragraph shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for a period not to exceed 12 months or a fine not to exceed \$1,000.00, or both, or public works not to exceed 12 months.

(B) Notwithstanding any other provision of law, any person who is convicted of or pleads guilty or nolo contendere to a fourth or subsequent violation of this paragraph within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be guilty of a felony and punished by imprisonment for not less than one nor more than five years."

PART II

SECTION 3.

The Official Code of Georgia Annotated is amended by replacing "Sections 16-13-2 and" with "Section" wherever the former term occurs in:

- (1) Code Section 15-7-4, relating to jurisdiction of state courts of counties;
- (2) Code Section 15-9-30.6, relating to jurisdiction of probate courts to try certain drug and alcohol offenses; and
- (3) Code Section 17-7-72, relating to jurisdiction of probate courts to try certain drug and alcohol offenses.

SECTION 4.

Code Section 15-10-260 of the Official Code of Georgia Annotated, relating to jurisdiction and penalties for trials of certain misdemeanors, is revised as follows:

"15-10-260.

(a) This article governs trials of misdemeanor violations of Code ~~Sections~~ Section 16-13-30 ~~and 16-13-2~~, relating to possession of ~~less than~~ one ounce or less of marijuana; Code Section 16-8-14, relating to theft by shoplifting of \$300.00 or less; Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age; and Code Section 16-7-21, relating to criminal trespass.

(b) Magistrate courts are authorized to conduct trials and impose sentences for violations of misdemeanors specified in subsection (a) of this Code section; provided, however, that the violation must have occurred in the unincorporated area of the county.

(c) A person convicted of violation of a misdemeanor specified in subsection (a) of this Code section shall be punished as provided in paragraphs (1) through (4) of this subsection as follows:

(1) For possession of ~~less than~~ one ounce or less of marijuana, as provided in ~~subsection (b) of Code Section 16-13-2~~ paragraph (2) of subsection (j) of Code Section 16-13-30;

(2) For theft by shoplifting, as provided in paragraph (1) of subsection (b) of Code Section 16-8-14;

(3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

(4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

(d) The jurisdiction of magistrate courts to try and dispose of the misdemeanor violations enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction of any other courts having jurisdiction to try and dispose of such cases."

SECTION 5.

Code Section 40-5-75 of the Official Code of Georgia Annotated, relating to suspension of licenses by operation of law, is amended by revising subsection (b) as follows:

"(b) Whenever a person is convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled substance or marijuana, or driving or being in actual physical control of any moving vehicle while under the influence of such substance in violation of ~~subsection (b) of Code Section 16-13-2~~, subsection (a), (b), or (j) of Code Section 16-13-30; or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391; or the law of any other jurisdiction, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The periods of suspension provided for

92 in this Code section shall begin on the date of surrender of the driver's license or on the
93 date that the department processes the conviction or citation, whichever shall first occur."

94 **SECTION 6.**

95 Code Section 42-8-34 of the Official Code of Georgia Annotated, relating to hearings and
96 determinations, referral of cases to probation supervisors, probation or suspension of
97 sentence, payment of fine or costs, disposition of defendant prior to hearing, continuing
98 jurisdiction, transferal of probation supervision, and probation fee, is amended by revising
99 paragraph (2) of subsection (d) as follows:

100 "(2) In addition to any other provision of law, any person convicted of a violation of
101 Code Section 40-6-391 or ~~subsection (b) of Code Section 16-13-2~~ paragraph (2) of
102 subsection (j) of Code Section 16-13-30 who is sentenced to probation or a suspended
103 sentence by a municipal, magistrate, probate, recorder's, mayor's, state, or superior court
104 shall also be required by the court to pay a one-time fee of \$25.00. The clerk of court, or
105 if there is no clerk the person designated to collect fines, fees, and forfeitures for such
106 court, shall collect such fee and remit the same not later than the last day of the month
107 after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority
108 for deposit into the general fund of the state treasury."

109 **PART III**

110 **SECTION 7.**

111 This Act shall become effective upon its approval by the Governor or upon its becoming law
112 without such approval and shall apply to offenses committed on or after such date.

113 **SECTION 8.**

114 All laws and parts of laws in conflict with this Act are repealed.